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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

5 FRANCISCO S. ROJAS,

6 Petitioner,

7 v.

8 PATRICK GLEBE,

9 Respondent.

CASE NO. C13-5750 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

10
11 This matter comes before the Court on the Report and Recommendation (“R&R”)
12 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 16), and
13 Plaintiff Francisco S. Rojas’s (“Rojas”) objections to the R&R (Dkt. 17).

14 On August 29, 2013, Rojas filed a petition for writ of habeas corpus. Dkt. 6. On
15 October 25, 2013, Respondent Patrick Glebe (“Glebe”) filed a response to the petition.
16 Dkt. 13.

17 On November 27, 2013, Judge Creatura issued an R&R finding that the petition
18 was time barred by four months. Dkt. 16 at 1-4. Further, Judge Creatura concluded that
19 there was no basis for statutory or equitable tolling. *Id.* at 4-6.

20 Rojas objects to Judge Creatura’s R&R essentially on the basis that Judge Creatura
21 failed to address what he terms his “timely submitted” “motion for an extension of time
22 to respond to Glebe’s answer to his petition.” Dkt. 17 at 3. Rojas maintains that this

1 motion indicated that he is a “Native Hispanic from Mexico, who has little to no
2 understanding of the English language, neither reading it or writing it.” *Id.* at 1. Rojas
3 argues that had Judge Creatura considered his motion, it would have led him to determine
4 that “I needed an extension to present a comprehensive detailed rebuttal backed by
5 pertinent ... authorities rebutting States answer to my petition” *Id.* at 3. According to
6 Rojas, “due to the Magistrate not addressing my motion for an extension of time, I was
7 not able to find anyone to help me write a rebuttal to the State’s answer.”

8 Despite Rojas’s contention that he filed a motion for an extension of time based on
9 his limited ability to speak English, the record in this case does not reflect that such a
10 motion was filed. Therefore, Judge Creatura did not err in failing to respond to Rojas’s
11 motion. Furthermore, Judge Creatura’s conclusion that Rojas’s petition was filed after the
12 statute of limitations expired is correct. His petition is time barred.

13 The Court having considered the R&R, Petitioner’s objections, and the remaining
14 record, does hereby find and order as follows:

- 15 (1) The R&R is **ADOPTED**;
16 (2) This action is **DISMISSED**;
17 (3) A certificate of appealability is denied.

18 Dated this 9th day of January, 2014.

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21 BENJAMIN H. SETTLE
22 United States District Judge